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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,518	05/09/2005	Gunther Beisel	FI-52PCT	4424

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EXAMINER	
HENRY, MICHAEL C	
ART UNIT	PAPER NUMBER
1623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,518	BEISEL, GUNTHER	
	Examiner	Art Unit	
	MICHAEL C. HENRY	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6,7,12,14 and 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6,7,12,14 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In view of the Appeal brief filed on 12/03/08, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Shaojia Anna Jiang/

Supervisory Patent Examiner, Art Unit 1623

Claims 1-4, 6, 7, 12, 14-15 are pending in application

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the phrases "consisting of" and "also contains active ingredients" which render the claim indefinite. More specifically, the phrase "consisting of" is used in instances where the component are limited to exactly what is recited whereas "also contains active ingredients" implies that the composition "comprises" other active ingredients. That is comprising is open-ended. Consequently, the claim is confusing and indefinite since it unclear whether the claimed composition "consist of" or "comprise of" the recited components or substances claimed therein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (GB 1302275).

In claim 1, applicant claims an "Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients. Young et al. disclose applicant's agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein

calcium ions (active ingredients) are incorporated fruit material that is encapsulated (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1 and 6). Young et al.'s agent is a reconstructed or simulated food product that comprises fruit pulp or puree encapsulated in a skin of aluminum alginate gel (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). It should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that "intended use" of a composition or product, e.g., for producing a satiety effect for weight loss, does not further limit claims drawn to a composition or product. See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161. Furthermore, since Young et al.'s agent consist of the same gel of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Young et al.'s agent should inherently provide the same satiety or weight loss effect as applicant's agent. In addition, Young et al.'s disclose that their alginate gel can behave as a semipermeable (page 2, col. 1, lines 14-19). This implies that the alginate gel is porous. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Young et al. disclose applicant's agent, wherein the agent is present in compressed form (encapsulated form) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). It should be noted that the examiner considers Young et al.'s encapsulated form of the said agent a compressed form, since said agent is shaped (compressed) into an encapsulated form. Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Young et al., since Young et al. agent contains aluminum alginate (see page 1, col. 1, lines 27-41; see page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 4, which is drawn to an agent

according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Young et al., since Young et al. agent is present as aluminum alginate (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 6 is drawn said agent according to claim 1, wherein the agent also contains active ingredients that include vitamins, trace elements, or medicinal compounds. Young et al. disclose applicant's agent, wherein the agent also contains incorporated aluminum or calcium ion (vitamin or active ingredients) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, wherein the agent is present in the form of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Young et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Young et al., since Young et al. also use said agent contains aluminum alginate (see col. 1, lines 27-41).

Claims 1-4, 6, 7, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hosny et al.(Pharmaceutica Acta Helvetiae 72 (1997) 159-164).

In claim 1, applicant claims an "Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients.

Hosny et al. disclose applicant's agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein diclofenac sodium (active ingredients) are incorporated therein (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). It should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that "intended use" of a composition or product, e.g., for producing a satiety effect for weight loss, does not further limit claims drawn to a composition or product. See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161. Furthermore, since Hosny et al.'s agent consist of the same gel of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Hosny et al.'s agent should inherently provide the same satiety or weight loss effect as applicant's agent. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Hosny et al. disclose applicant's agent, wherein the agent is present in compressed form (beads or encapsulated beads) (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). It should be noted that Hosny et al.'s form of the said agent is also in a encapsulated form (see page 161, section 2.2.8.). Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Hosny et al, since Hosny et al .'s agent contains aluminum alginate (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Hosny et al., since Hosny et al.'s agent is present as aluminum alginate (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). Claim 6 is drawn said agent

according to claim 1, wherein the agent also contains active ingredients that include vitamins, trace elements, or medicinal compounds. Hosny et al. disclose applicant's agent, wherein the agent also contains incorporated diclofenac sodium (medicinal compound or active ingredients) (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, wherein the agent is present in the form of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Hosny et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Hosny et al., since Hosny et al. also use said agent contains aluminum alginate (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.).

Claims 1-4, 6, 7, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Pulaski et al.(Annuals of Surgery (1950) Vol. 132, No. 2, 225-233).

In claim 1, applicant claims an "Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients. Pulaski et al. disclose applicant's agent consisting of a porous gel of the anionic polymer (pectinate), wherein the agent is present as an aluminum salt (aluminum pectinate) and wherein streptomycin (active ingredients) are mixed or incorporated therein (see page 227, 2nd para.). It

should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that "intended use" of a composition or product, e.g., for producing a satiety effect for weight loss, does not further limit claims drawn to a composition or product. See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161. Furthermore, since Pulaski et al.'s agent consist of the same gelatin capsule or tablet form of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Pulaski et al.'s agent should inherently provide the same satiety or weight loss effect as applicant's agent. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Pulaski et al. disclose applicant's agent, wherein the agent is present in compressed form (encapsulated or tablet form) (see page 227, 2nd para.). It should be noted that Pulaski et al.'s form of the said agent is also in encapsulated or tablet (see page 227, 2nd para.). Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Pulaski et al, since Pulaski et al .'s agent contains aluminum pectinate (see page 227, 2nd para.). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Pulaski et al., since Pulaski et al.'s agent is present as aluminum pectinate (see page 227, 2nd para.). Claim 6 is drawn said agent according to claim 1, wherein the agent also contains active ingredients that include vitamins, trace elements, or medicinal compounds. Pulaski et al. disclose applicant's agent, wherein the agent also contains incorporated streptomycin (medicinal compound or active ingredients) (see page 227, 2nd para.). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein

the agent is present as an aluminum salt, wherein the agent is present in the form of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Pulaski et al. disclose applicant's agent, wherein the agent is in the form of tablet and capsules (see page 227, 2nd para.). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Pulaski et al., since Pulaski et al. also use said agent contains aluminum pectinate (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (GB 1302275).

In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

Young et al. disclose applicant's composition consisting of porous gel or foam of at least one anionic polymer (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Furthermore, Young et al. disclose that said composition is edible. Young fails to disclose that the composition can provide a satiety effect. However, Young et al's composition

should also produce a satiety effect based on the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hosny et al. (Pharmaceutica Acta Helvetiae 72 (1997) 159-164).

In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

Hosny et al. disclose applicant's agent consisting of a gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein diclofenac sodium (active ingredients) are incorporated therein (see page 160, 2nd col., 2nd para.; i.e., section 2.2.2.; see also section 2.2.1.). Furthermore, Hosny et al. disclose that said composition can be consumed (taken orally). Hosny et al. fail to disclose that the composition can provide a satiety effect. However, Hosny et al's composition should also produce a satiety

effect based on the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Hosny et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Hosny et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulaski et al.(Annuals of Surgery (1950) Vol. 132, No. 2, 225-233)..

In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

Pulaski et al. disclose applicant's agent consisting of a gel of the anionic polymer (pectinate), wherein the agent is present as an aluminum salt (aluminum pectinate) and wherein streptomycin (active ingredients) are mixed or incorporated therein (see page 227, 2nd para.). Furthermore, Pulaski et al. disclose that said composition can be consumed (taken orally). Pulaski et al. fail to disclose that the composition can provide a satiety effect. However, Pulaski et al's composition should also produce a satiety effect based on the amount consumed of the

composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Pulaski et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Pulaski et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

Response Arguments

Applicant's arguments with respect to claims 1-4, 6, 7, 12-15 have been considered but are not found convincing.

The applicant argues that in the passage cited by the Examiner (page 1, col. I, lines 27-41) in the reference there is there is no mention that aluminum is an active ingredient. Instead, what this passage states is that via calcium or aluminum ions, which are contacted with an alginate sol in drop form, the alginate skin is formed. By this step, above all, the aluminum alginate, which then envelopes the fruit pulp, is formed first. There is no mention by Young that aluminum is an active ingredient. However in addition, Young discloses that there are dissolved aluminum ions or calcium ions in the interior of the drops (page 1, col. 1, lines 27-41, especially lines 36-41; see also claim 6). Also, it should be noted that Young's ingredient (calcium, a vitamin) is the same as applicant's active ingredient. It should also be noted that it is well known

in the art that calcium is a vitamin.

The applicant argues that it is further incorrect to count the aluminum ions of the aluminum alginate as trace elements. Since the aluminum ions form counterions to the anionic groups of the alginate polymer, they cannot simply be separated and then used as trace elements, because the principal of charge neutrality of compounds also holds true in this situation - trace elements that act as active ingredients must be readily accessible to the body without problems. However, Young discloses that there are dissolved calcium ions in the interior of the drops (page 1, col. 1, lines 27-41, especially lines 36-41). Also, it should be noted that Young's ingredient (calcium, a vitamin) is the same as applicant's active ingredient. Furthermore, the said dissolved calcium ions (vitamin) that act as active ingredients would be readily accessible to the body without problems.

The applicant argues that trace elements in the dietary or nutritional purposes do not normally include aluminum. However, calcium is a well known vitamin and applicant's composition which is intended for oral consumption also contains calcium. Furthermore, Young's product is also intended for oral consumption (a food product) (see page 1, col. 1, lines 27-4.

The applicant argues that Young et al. disclose edible products. These edible products have a certain caloric content and thus do not lead to a weight reduction. When one looks to the examples of Young et al., fruit pulp, which itself already has high sugar content, is mixed with sugar and encapsulated. When one considers such an encapsulated product one cannot speak of a satiety effect since sugar containing products work opposite thereto and generally increase appetite. However, Young et al's product or composition does not contain a high sugar content.

Furthermore, applicant's composition comprises the same ingredient as Young and does not exclude other ingredients as claimed. It should be noted that applicant's claim recites that their composition "also contains active ingredients" (see claim 1). It should also be noted that fruit diet would result in weight loss.

The applicant argues that those skilled in the art would not be listing calcium or aluminum as active ingredients. On the contrary however, calcium is a vitamin that is well known vitamin in the art.

The applicant argues most important, in the presently claimed invention the anionic polymer is not used for encapsulation of other materials. This is not disclosed by Young et al. However, applicant composition as claimed does not exclude encapsulated materials. In fact, applicant composition can be in a capsule form (see claim 7).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8.30am-5pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Henry
March 14, 2009.

/Shaojia Anna Jiang/
Supervisory Patent Examiner
Art Unit 1623